IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11636 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA THRO' CHIEF COMMISSIONER OF INCOME TAX & 1 - Petitioner(s)
Versus
S.B.PARMAR - Respondent(s)

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Appearance :

MRS MAUNA M BHATT for Petitioner(s) : 1 - 2.MR MANISH R BHATT for Petitioner(s) : 1 - 2.
MR MS TRIVEDI for Respondent(s) : 1,
MR RAJENDRA M DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 27/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Petitioners – Union of India and the Additional Commissioner, Income-tax, have challenged in this petition the impugned Judgment and order dated 20.2.2003, passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short "the Tribunal") in OA No. 338 of 2002, whereby the learned Tribunal allowed the Original Application No.338/02, filed by the respondent – original applicant and directed the present petitioners to give effect to the recommendations of the DPC and give promotion to the applicant as per the recommendation of the DPC from the date of his immediate junior was given promotion with all consequential benefits of service, with a direction that the said exercise be carried out within three months from the date of receipt of the order.

Ms. Bhatt for the petitioners vehemently submitted that the learned Tribunal could not have issued the aforesaid directions to the petitioners to give effect to the recommendation of DPC and give promotion to the original applicant from the date of promotion given to his junior with all consequential benefits dehors the Office Memorandum dated 14.9.1992 (Annexure:A-4). Relying on the Judgment of the Hon'ble Supreme Court in AIR 1993 SC 1585 Ms. Bhatt submitted that the learned Tribunal, while allowing the original Application filed by the respondent – original applicant, travelled beyond its

jurisdiction, therefore, this Court should exercise its supervisory jurisdiction under Article 227 of the Constitution though the scope of which is very narrow and limited.

Before appreciating the aforesaid submissions of learned Counsel Ms. Bhatt for the petitioners, few relevant facts are required to be stated which are as under.

The original applicant – present respondent belongs to Scheduled Caste. He had initially joined Income-tax Department on the Class-IV Post of Peon on 31.12.1980. Thereafter, he passed departmental examination for the post of LDC and accordingly promoted to the higher post of LDC on 27.7.1988. He further proved his ability, efficiency and merit in the examination of ministerial staff and further promoted as UDC on 7.7.1995 and since then he was working as UDC. On completion of three years service as UDC / TA he became eligible for promotion in the higher post of Senior Tax Assistant. On 5.7.2001 juniors of the original applicant were given promotion to the higher post of Senior Tax Assistant, therefore, he first made representation dated 17.7.2001 to the Authority, but it was not considered. Therefore, he approached the learned Tribunal by way of Original Application No.338 of 2002 praying that the respondents be directed to promote him to the post of Senior Tax Assistant with all consequential benefits from the date his juniors were promoted to the post of Senior Tax Assistant. In response to the same the learned Tribunal issued

Notice to the respondents – petitioners herein. The Authority filed reply on 20th August, 2002, wherein it was mainly contended that the case of the applicant was duly considered by the DPC in its meeting held on 5.7.2001, but in view of criminal case pending against the applicant the findings in his case was kept in sealed cover as per Office Memorandum dated 14.9.1992.

FIR was lodged against the original applicant by the private party and considering the charge-sheet filed in criminal Court against the applicant the learned Tribunal found that because of internal dispute with his neighbour such criminal case was filed against him of abusing and giving threats u/s.504, 506 and 114 I.P.Code, was not relating to his service.

Thus, the learned Tribunal was of the considered opinion that when the criminal case filed against the applicant not involving moral turpitude and that the applicant was not charge-sheeted for violation of any service rules or statutory rules or criminal case pertaining to moral turpitude then it was not open to the DPC to keep its finding with regard to the suitability of the applicant for further promotion to the post of Senior Tax Assistant is covered. Accordingly, the Application was allowed by the learned Tribunal and the directions were issued to the present petitioners to give effect to the recommendation of the DPC and give promotion to the applicant from the date his immediate junior was given promotion with all consequential benefits.

Under the aforesaid circumstances, we will now consider the submission of Ms. Bhatt.

It is true that as per the Office Memorandum the procedure of sealed cover to be followed, but the DPC can not mechanically apply that procedure in each and every case. If the criminal case filed against the applicant was not involving any moral turpitude then such procedure should not have been followed by the DPC. In any case when the learned Tribunal, on peculiar facts of this case, exercised its discretion in favour of the original applicant, who rose from the lowest post of class-IV and found eligible by the DPC to the higher post of Sr. Tax Assistant then certainly this Court would not like to exercise its limited jurisdiction under Article 227 of the Constitution when real justice is done to the poor scheduled caste man. His service record was otherwise outstanding and after initially joining duty as Class-IV in 1980 he rose stage to stage. First he passed Departmental lower departmental examination and promoted as LDC, then further passed examination and promoted to the higher post of UDC and became eligible for further promotion to the higher post of Senior Tax Assistant and found fit for promotion to the said post of DPC. If this Court interferes with the orders passed by the learned Tribunal in its supervisory jurisdiction under Art. 227 of the Constitution then the grave injustice will be done to the respondent – original applicant who is coming from the lowest strata of the society. Therefore, we

do not want to exercise our limited jurisdiction under Art. 227 of the Constitution in favour of the present petitioners.

In view of the above discussion, this petition fails and is hereby dismissed. Rule discharged. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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